IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Mr. JUSTICE M.H.S. ANSARI

and
THE HON'BLE Mr. JUSTICE T.Ch.SURYA RAO

WRIT PETITION No. 20966 of 2004

Between:

M/s. Fusion Chemicals & Products Pvt. Ltd. IDA Cherlapally, Rep by its Managing Director, Mr. S. Manohar Raju.

..... PETITIONER

AND

The Commercial Tax Officer, Nacharam.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent in issuing the impugned proceedings No. RC No. 83/1261/2004 dt. 4-10-2004 demanding tax of Rs. 3,58,252/- as illegal, arbitrary and without authority of law and contrary to the principles of natural justice and set aside the same and declare the respondent cannot demand the impugned tax at the higher rate without there being any revision orders or assessment orders.

Counsel for the Petitioner: Mr. BHASKAR REDDY VEMIREDDY

Counsel for the Respondent: GP FOR COMMERCIAL TAXES

The Court made the following :

ORAL ORDER: (per M.H.S.Ansari, J.)

In the instant Writ Petition, assessee-writ petitioner has questioned the proceedings dated 4.10.2004 demanding tax of Rs. 3,58,252/-. It is the contention of the writ petitioner that the demand of the impugned tax at the higher rate without there being any revision orders or assessment orders is without jurisdiction and contrary to law.

A counter-affidavit has been filed on behalf of the Commercial Tax Officer, 2nd respondent herein. Therein, it has been stated as under:

> " In the light of the report of the Regional Vigilance and Enforcement Wing, I had calculated the tax payable by the petitioner @ 12% for the assessment years mentioned above and worked out tax payable by the petitioner atRs.3,58,252.00. Accordingly, a notice was issued on 4.10.2004. In this notice, instead of asking the petitioner to show cause why this amount should not be recovered from them in the light of the judgment of the Tribunal and report of the Vigilance and Enforcement Wing, by mistake and due to pressure of work, he was asked to pay the tax."

In view of the admission as above, the impugned demand dated 4.10.2004 is liable to be, and, is, accordingly, set aside with liberty, however, to the respective parties, namely, the petitioner herein, as also the respondent-tax authorities, to pursue such remedies, as may be open to them in law. Writ Petition, accordingly, stands disposed of quashing and setting aside the impugned demand, subject, however, to the observation that if any proceedings, meanwhile, have been taken by the respondent-authorities, it shall be open to the petitioner to avail of such remedies as are open to it at law with respect to subsequent proceedings.

M.H.S.ANSARI, J.

14.12.2004.

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T.Ch.SURYA RAO, J.

VR.

To

1. The Commercial Tax Officer, Nacharam.

2. Two CCs to Government Pleader for Commercial Taxes, High Court Buildings, Hyderabad (OUT).

3. Two CD copies.